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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,576	01/05/2004	Dennis Barnum	QDP1	3093

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EXAMINER	
HAIDER, FAWAAD	
ART UNIT	**PAPER NUMBER**
3627	
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03/06/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/751,576	BARNUM ET AL.	
	Examiner	Art Unit	
	FAWAAD HAIDER	3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-9 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. *Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.*

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coyle (2002/0174036) in view of McNee et al (2003/0065572).

Re Claim 1: Coyle discloses entering a plurality of team member identifiers into a data storage, one of said plurality of team member identifiers being associated with a team member (see [0027, 0034]); accessing said data storage via the internet by a customer (see Abstract, [0002-0005]); selecting one of said plurality of team member identifiers by said second customer (see [0044]); committing to purchase at least one of said plurality of products by said second customer, thereby defining an internet purchased product (see [0004]); providing a product brochure to said team member, said product brochure including descriptions of at least one of said plurality of products

(see [0036-0038]); and directly selling at least one product to a first customer by said team member, thereby defining a direct sale (see [0058]).

However, Coyle fails to disclose said plurality of team member identifiers to a plurality of products in said data storage. Meanwhile, McNee et al discloses associating said plurality of team member identifiers to a plurality of products in said data storage (see Abstract, [0006, 0007, 0011]). From the teaching of McNee, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Coyle's invention with McNee's use of associating identifiers to products in order to "provide valuable marketing information to the merchant, and thus provides an incentive for the merchant to participate in the program (see McNee [0008])."

Re Claim 2: Coyle discloses further comprising the step of combining said direct sale with said internet purchased product (see [0005-0006]).

Re Claim 3: McNee discloses further comprising the step of calculating prizes won by said team member (see [0031]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Coyle's invention with McNee's use of prizes in order to "provide valuable marketing information to the merchant, and thus provides an incentive for the merchant to participate in the program (see McNee [0008])."

Re Claim 4: Coyle discloses further comprising the step of generating sales tax records relative to at least one state (see [0059]).

Re Claim 5: The Examiner takes Official Notice that it would have been obvious to one of ordinary skill in the art at the time of the invention to disclose further

comprising the step of delivering said internet purchased product directly to said second customer and direct sales product by way of at least one of said plurality of team members. This is commonly done today as girl scout cookies sell their products door to door.

Re Claim 6: Coyle discloses further comprising the step of entering a plurality of email addresses corresponding to potential customers (see [0042, 0046, 0055]).

Re Claim 7: Coyle discloses wherein said entering step is completed at least once by said team member (see [0033, 0036, 0053, 0055]).

Re Claim 8: McNee discloses further comprising the step of calculating a total sale associated with said one of said plurality of team member identifiers (see [0023, 0024, 0026]). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Coyle's invention with McNee's use of a total sale in order to "provide valuable marketing information to the merchant, and thus provides an incentive for the merchant to participate in the program (see McNee [0008])."

Re Claim 9: Coyle discloses further comprising the step of providing a plurality of passwords to a plurality of team members, each of said plurality of team members associated with a unique one of said team member identifiers, each of said plurality of passwords uniquely associated with a corresponding one of said plurality of team members (see [0042, 0044, 0055]).

Response to Arguments

5. Applicant's arguments filed 12/19/08 have been fully considered but they are not persuasive. Applicant asserts that the new limitations are not shown by the prior art.

The examiner does not concur. The new limitations have been addressed in the modified rejection explanation.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fawaad Haider whose telephone number is 571-272-7178. The examiner can normally be reached on Monday-Friday 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Fawaad Haider/
Examiner
Art Unit 3627

FIH

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627